

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

REX CHAPPELL,

Plaintiff,

No. CIV S-01-1979 FCD KJM P

vs.

SAM BESS, et al.,

Defendants.

ORDER

On April 8, 2005, defendants filed a request for reconsideration of the magistrate judge's March 30, 2005 order denying defendants' request to re-open discovery. The magistrate judge denied defendants' request as defendants had not provided any reason why discovery had not been completed before the June 11, 2004 discovery deadline. As provided by this court's Local Rule 72-303(f), a magistrate judge's orders shall be upheld unless "clearly erroneous or contrary to law."

Upon review of the entire file, the court finds that the magistrate judge's ruling was not clearly erroneous or contrary to law. Furthermore, defendants still have failed to provide any substantive reason that might excuse defendants' failure to complete discovery before the discovery deadline. See Fed. R. Civ. P. 6(b). Substitution of new counsel for defendants after the discovery cutoff, in and of itself, does not excuse a failure to complete discovery without

1 further explanation.¹ Defendants' motion for reconsideration will be denied.

2 Plaintiff requests that defendants' counsel be sanctioned for bringing the motion
3 for reconsideration. Plaintiff has not shown, under Rule 11 of the Federal Rules of Civil
4 Procedure or otherwise, that sanctions are warranted.

5 In the magistrate judge's March 30, 2005 order, the magistrate judge granted
6 defendants thirty days within which to file a motion for summary judgment. Defendants seek an
7 extension of time. Good cause appearing, defendants will be granted thirty days from the date of
8 this order within which to file their motion.

9 In accordance with the above, IT IS HEREBY ORDERED that:

10 1. Upon reconsideration, the order of the magistrate judge filed March 30, 2005
11 denying defendants' request to re-open discovery is affirmed;

12 2. Plaintiff's April 22, 2005 request that defendants' counsel be sanctioned is
13 denied; and

14 3. Defendants' request for an extension of time to file a motion for summary
15 judgment is granted. Defendants shall file their motion for summary judgment within thirty days
16 of this order.

17 DATED: June 29, 2005

18
19 /s/ Frank C. Damrell Jr.
20 FRANK C. DAMRELL JR.
21 United States District Judge
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25 ¹ The discovery cutoff has been enforced equitably in this case, as the magistrate judge
26 also denied plaintiff's motion to compel filed after the cutoff on untimeliness grounds. See
Order filed March 30, 2005.